

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

TEMTEX INDUSTRIES, INC.	)	
a corporation,	)	
	)	
Plaintiff	)	
	)	
vs.	)	Case No.09 CV 1379
	)	Judge Lefkow
TPS ASSOCIATES, LLC., and	)	Magistrate Judge Kim
MARTIN BORG	)	
	)	
Defendants	)	

**MOTION**

Now comes Counter Claimant, TPS Associates, LLC (TPS) and moves the Court for an order striking the answer of Temtex Industries, Inc. (Temtex) to the Counterclaim and for the entry of Judgment on its Counterclaim against Temtex and for reason therefor states:

1. TPS filed a Counterclaim against Temtex asking for a Judgment for services rendered by TPS to Temtex pursuant to a Consulting Agreement and a Sales Consulting Agreement. A copy of the Consulting Agreement is attached as Exhibit 1 to the Counterclaim and a copy of the Sales Consulting Agreement is attached as Exhibit 2 to the Counterclaim.

2. The Answer of Temtex asserted that it did not owe the amounts claimed because TPS had breached the Agreement between the parties.

3. The parties exchanged documents and TPS noticed the deposition of Gary Rotman the President of Temtex.

4. Mr. Rotman did not appear for his deposition as noticed and after consultation with his attorneys, Mr. Rotman still refused to appear for deposition. This Court entered an Order on July 8, 2010 requiring Gary Rotman to appear before the Court on August 5, 2010. When Gary Rotman failed to appear as ordered on August 5, 2010, this Court entered an Order dismissing the Complaint of Temtex with prejudice.

5. Mr. Rotman has continued in his refusal to appear for deposition or to participate in this litigation. After his counsel withdrew, counsel for TPS spoke to Gary Rotman about appearing for his deposition but he refused to agree to be deposed.

6. This Court should therefore strike the Answer to the Counterclaim of TPS and enter Judgment in favor of TPS and against Temtex in the amount of \$297,970.61 plus interest since January 1, 2008 and for an accounting from Temtex to TPS from October 2007 as required by the Agreements between the parties.

7. Attached hereto and made a part hereof is the Affidavit of Helene Borg, the Managing Member of TPS stating the amount owed by Temtex to TPS and the calculation of the amount due as of April 30, 2011.

WHEREFORE, TPS moves the Court as follows:

A. For entry of an Order striking the Answer of Temtex Industries, LLC to the Counterclaim of TPS ASSOCIATES, LLC.

B. For entry of a Judgment in favor of TPS ASSOCIATES, LLC. Associates, LLC and against Temtex Industries, Inc. in the amount of \$472,286.80 which includes interest through April 30, 2011; and

C. That Temtex Industries, Inc. be required to account to TPS Associates, LLC for all sales made by it from October 2007 to the present date as required by the Consulting Agreement and the Sales Consulting Agreement between the parties.

Respectfully submitted,

TPS ASSOCIATES, LLC

BY: /s/ Norman Hanfling

Norman Hanfling  
208 S. LaSalle St., #1400  
Chicago, IL 60604  
(312) 853-0882 Fax: (312) 263-3416

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**AFFIDAVIT**

HELENE BORG, being first duly sworn states:

1. Affiant is the designated manager of TPS ASSOCIATES, LLC. (TPS)
2. As part of her duties, Affiant maintains the books and records of TPS .
3. As of January 31, 2008 the records of TPS state that TEMTEX INDUSTRIES, INC. (TEMPEX) was indebted to TPS in the sum of \$297,972.81.
4. This amount was owed for consulting and sales services performed by TPS for TEMTEX pursuant to the Consulting Agreement and Sales Consulting Agreement between the parties.
5. The Agreements provide for interest on unpaid balances at the rate of 1-1/2% per month. For the period from February 1, 2008 through April 30, 2011, the interest due to TPS is \$174,314.09.

6. The full amount due from TEMTEX to TPS as of April 30, 2011 is \$472,286.90

  
HELENE BORG

Subscribed and sworn to before me  
this \_\_\_\_ day of April, 2011

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

Norman Hanfling  
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Fax: (312) 263-3416